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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

2005 NOV 17 P 4:46

UNITED STATES OF AMERICA)

EDWARD J. COOPER, JR.
v.

GARY WAYNE PEARSON)

CR. NO. 1:05-CR-0257-A

MOTION FOR LEAVE TO AMEND INDICTMENT

Comes now the United States of America, by and through Leura Garrett Canary, United States Attorney for the Middle District of Alabama, and moves this Court for Leave to Amend the Indictment in the above-styled cause. In support thereof, the United States submits the following:

1. On November 15, 2005, a grand jury sitting for this district returned a one count indictment against the defendant. In drafting the indictment, the United States inadvertently committed a typographical error. Specifically, the code section listed in the caption of the Indictment references the appropriate code section for the criminal offense for which the defendant was indicted ("47 U.S.C. § 605(e)(4)"); however, within the body of the indictment, the code section was inadvertently misidentified as "Title 17, United States Code, Section 605(e)(4)".

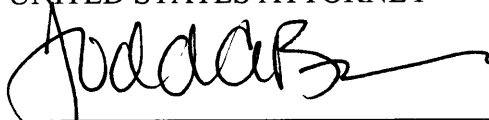
2. A substantive amendment to an indictment after it has been returned by a grand jury is reversible error. See generally, Stirone v. U.S., 361 U.S. 212, 215-18 (1960) (amendment to indictment violates the 5th Amendment Grand Jury Clause). However, where the amendment is merely to correct a clerical error, the amendment is permissible. U.S. v. Diaz, 190 F.3d 1247, 1252-53 (11th Cir. 1999) (no impermissible amendment of indictment when merely to correct nonprejudicial typographical error). The amendment sought herein is not substantive or prejudicial, its sole purpose is to correct a clerical error, and is thus permissible.

3. The defendant has not been arrested, nor has he seen the instant indictment.

For the above stated reasons, the United States respectfully requests leave to amend the indictment to correctly identify the code section within the body of the indictment to read "Title 47, United States Code, Section 605(e)(4)."

Respectfully submitted this the 17th day of November, 2005.

LEURA GARRETT CANARY
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read "Todd A. Brown", written over a horizontal line.

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